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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS.

Appellants

versus

CITY OF SHREVEPORT

Appellee

BRIEF OPPOSING MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS

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LECOMTE, SHREVEPORT, LOUISIANA

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BRIEF OPPOSING MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS

May it Please the Court:

In the motion filed by the City of Shreveport it takes the position that the questions raised in this appeal are not substantial. In reply we point out that the Supreme Court of Louisiana has validated an entire new species of "health measure" and that the encyclopedias of law may be searched in vain in an effort to find any legal support for the action proposed by this defendant. There is no question but that a State or subdivisions thereof have plenary power to combat the introduction and spread of contagious or infectious diseases. But here

it is said that this power gives the sovereign the right to use a public water supply as a vehicle to medicate the people for the purpose of "reducing the incidence" of a non-contagious disease. This concept of the power of the sovereign is not only novel in law but is highly dangerous because under it any chemical, drug or medicine may be administered to an entire people whenever, in the opinion of the sovereign, such action is desirable.

The appellee attempts to distinguish this case from *Jacobson v. Massachusetts*, 197 U.S. 11, by pointing out that there was compulsion in the vaccination law there involved, whereas, as the Supreme Court of Louisiana said, there would be no compulsion on these plaintiffs to drink this medicated water. We are sure that Your Honors will recognize the practical aspects of this case. The vast majority of citizens in a community will and must, use the communal water supply. The defendant City admits that its only reason for desiring to impregnate the water with this drug is to cause people to drink it and thereby secure an alleged benefit. If the people to any considerable extent refrain from drinking the water the result desired by the appellee would not be secured.

We argued in the Supreme Court of Louisiana and repeat our argument here that Your Honors in the *Jacobson* case maintained the right of the sovereign to medicate the people solely by reason of the contagious character of the disease and the grave and imminent danger to the general public which existed. In this case there is no

"pressure of great dangers" and no danger to the general public as distinguished from the individual. As the Louisiana District Judge pointed out the question is not one of the public health but of individual health and hygiene. This is true because no citizen afflicted with dental caries can communicate it to another citizen or to the public.

The Supreme Court of Louisiana held that the Fourteenth Amendment does not deprive a State of the right to interfere with individual liberty where the public interest, health and general welfare is involved. We point out that Your Honors have recently held otherwise.

We suggest that the questions raised by this appeal, far from being unsubstantial, present for decision fundamental and far reaching questions of Constitutional law which bear upon the health and welfare of all of the citizens of the United States. We believe that the motion to affirm and alternatively to dismiss, should be denied.

Respectfully submitted,

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By their Attorneys,

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MARKE E. CHAPMAN, ET ALS
Plaintiffs-Appellants

V.

CITY OF SHREVEPORT
Defendant-Appellee

Appeal from the Supreme Court of Louisiana

MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS WITH SUPPORTING BRIEF BY DEFENDANT-APPELLEE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 407

MARKE E. CHAPMAN, ET ALS

Appellants

versus

CITY OF SHREVEPORT

Appellee.

MOTION TO AFFIRM AND ALTERNATIVE MOTION TO DISMISS

Appellee pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States moves that the final judgment and decree of the Supreme Court of Louisiana be affirmed and in the alternative that the appeal herein be dismissed on the ground that the question presented is so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree entered on May 31, 1954 by the Supreme Court of Louisiana dismissing the Appellants suit at their costs

and reversing a judgment of the District Court of Caddo Parish, Louisiana, which granted an injunction at the instance of the Plaintiff-Appellants restraining the City of Shreveport from inserting organic sodium fluoride in the public water supply of said city for the purpose of promoting the dental health of the city and preventing dental caries or decay in the teeth of children. The decision of the Supreme Court of Louisiana is reported in 74 So. 2d, 142 (Advance Sheets September 16, 1954) and a copy of the opinion is attached to the Appellants' jurisdictional statement.

The City of Shreveport owns and operates a municipal water works plant and other facilities for the distribution and sale of water for individual consumption. The Plaintiffs are taxpayers and water consumers in the said city.

The City Council of the City of Shreveport on October 13, 1953 adopted Resolution No. 262 of 1953 authorizing the Commissioner of Public Utilities to proceed with a calling for bids on the necessary equipment for the fluoridation of the city water supply. The resolution recites that this action was taken pursuant to the request of the Council of Dental Health of the Louisiana State Dental Society, the Council of Dental Health of the 4th District Dental Association, the Shreveport Medical Society and the City Board of Health of Shreveport, all of which organizations advocate, favor and approve and petition the city to take this action. The primary purpose of adding fluorides to the water supply is to

reduce dental decay in children's teeth in the City of Shreveport.

Appellants attacked the validity of the act of the city on the ground that no authority therefor had been lawfully delegated to the City Council, and that if such power has been granted to the city, the exercise of such power would infringe upon Plaintiffs' constitutional rights in violation of the Fourteenth Amendment of the Constitution of the United States. The District Judge held that the City Council had no authority to take the proposed action and accordingly ordered that preliminary writ of injunction issue prohibiting the Defendant from proceeding to fluoridate its water supply. The Supreme Court of Louisiana reversed the decision of the Lower Court and dismissed Plaintiffs' suit holding that the City had express authority to take the proposed action and that the exercise of such authority would violate no constitutional rights of the Plaintiffs. Plaintiffs have accordingly appealed to this Court.

ARGUMENT

The decision of the Supreme Court of Louisiana is correct and is supported by the decisions of this Court so that the questions raised on appeal are unsubstantial and warrant no further argument in this Court.

The findings of facts and conclusions set forth in the opinion of the Supreme Court of Louisiana clearly show that the Appellee was acting within the police power expressly conferred upon it in its Charter and

that the action taken by the City was for the purpose of protecting the health of the people and promoting the public welfare in a manner and to an extent reasonably necessary for the public interest. The records show and the Supreme Court opinion shows that dental caries among children and tooth decay among adults is one of the most prevalent diseases affecting the human body and that the injection of sodium fluoride into the public drinking water to the extent proposed by the City will in a large measure alleviate this disease which is widespread in the City of Shreveport, without any harmful effects upon anyone who drinks such water; that fluorides are minerals which exist naturally in the water supply of many communities throughout the United States and in many foods consumed by human beings. At the present time fluorides are being added to the public water supplies in practically every state in the Union and in the District of Columbia. Vital statistics from communities in the United States consuming water containing one part of fluoride per million parts of water and reports from physicians in these communities have indicated unformly, and without exception, no undesirable effects on birthrate, death rate, elderly or sick individuals or any other persons. As a result of these facts and of various studies and experiments on the subject, the fluoridation of public water supplies has been approved and recommended by the United States Public Health Service, National Institution of Health, American Dental Association, American

Medical Association, American Public Health Association, Association of State and Territorial Health Officers and numerous other national and state scientific organizations.

Appellants on Page 3 of their Jurisdictional Statement cite five decisions of this Court which they contend will support the jurisdiction in this case. None of these case are directly applicable except the case of *Jacobson v. Massachusetts*, 197 U. S. 11, 49 L. Ed. 643. In this case Jacobson was convicted for refusing to submit to compulsory smallpox vaccination as required by the laws of Massachusetts. An appeal was taken to this Court on the ground that the statutes of the State of Massachusetts deprived him of his liberty without due process of law and denied him equal protection of the laws in violation of the Fourteenth Amendment. This Court sustained the conviction and held that the state was acting under its police power — a power which it did not surrender in becoming a member of the Union under the Constitution; that the State Statute was enacted to protect the public health and the public safety of the people of Massachusetts and that the Appellant's right to liberty was subject to such action by the State in order to secure the general comfort, health and prosperity of its citizens. This Court further held that the safety and health of the people of the State are in the first instance for that commonwealth to guard and protect and are matters that do not necessarily concern the national government.

It will be noted that in the Jacobson case there was a direct compulsion upon all citizens of the state to

submit their bodies to medical vaccination for the purpose of preventing a widespread disease. In the instant case the Supreme Court of Louisiana has pointed out that there is no direct compulsion on the Plaintiffs or any one else to drink the water which is offered by the City of Shreveport for sale. Plaintiffs, if they desire, may use the public water supply for washing, cooking, bathing, sprinkling and other general purposes. They can easily secure drinking water from private bottling concerns which offer it for sale in the City of Shreveport. There is no evidence in the record to show that Plaintiffs and Appellants would be greatly inconvenienced by securing their drinking water elsewhere or by other means.

The City of Shreveport in the management and operation of its municipally owned water works is acting in a proprietory rather than a governmenal capacity. It is therefore subject to the same duties and responsibilities and possesses the same rights and privileges as individuals and private corporations enjoy in such business.[1] When the Legislature confers upon a municipal corporation the right and power to own, maintain and operate water works facilities for the purpose of supplying water and making charges therefor, the manner and extent of the exercise of such power is, in the absence of the abuse

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1. Solomon v. City of New Orleans, 156 La. 629, 101 So. 1, Baton Rouge Water Works v. La. Pub. Serv. Com., 156 100 So. 710. Oliphant v. Lake Providence, 193 La. 675, 192 So. 95.

thereof, entirely within the discretion of the municipal authorities.[2] The City is not obliged to furnish water to its inhabitants for drinking purposes and, if it does it can do so under its own terms and conditions. Any consumer or prospective consumer who desires the privilege of purchasing the water may contract for his supply or not, as he may choose. There is, therefore, no compulsion upon the City to furnish any particular kind of water to the Plaintiffs and Appellants and there is no obligation on them to buy their water from the City.

From what has been said above it is perfectly clear that the "privileges and immunities" for which the Appellants seek protection from this Court under the Fourteenth Amendment are not their privileges and immunities as citizens of the United States, but are privileges and immunities which belong to them as citizens of the City of Shreveport and the State of Louisiana. Their privilege to purchase their drinking water from the public supply comes from the City of Shreveport and not from the Government of the United States. This case is accordingly parallel with that of *Hamilton v. Regents of the University of California*, 293 U. S. 245, 79 L. Ed. 343. In that case Plaintiffs who were students of the University of California refused to take courses in compulsory military training on the ground of their

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2. Connery v. Water Works Co., 42 La. Ann. 188, 7 So. 559.
Ice, Light and Water Works Co. v. Lake Charles, 106 La. 65, 69, 72, 30 So. 289.
Brennan et al v. Water & Sewerage Board, 108 La. 569, 583, 32 So. 563.
Parker v. Mayor of Monroe, 128 La. 591, 55 So. 587.